

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management
Rule No. 335-3-8-.14
Rule Title: TR NOx Annual Allowance Allocations

X New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? YES

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? YES

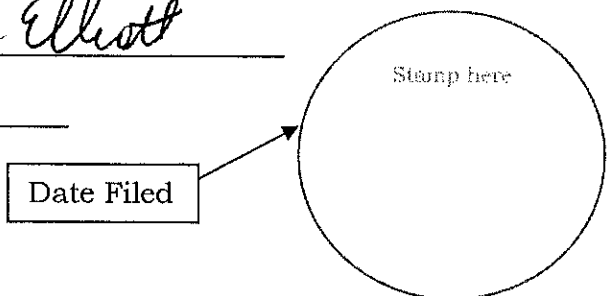
If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *Mandy Elliott*

Date 07-20-2015



APA-2
11/96

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
AIR DIVISION

NOTICE OF INTENDED ACTION

AGENCY NAME: Environmental Management

RULE NO. & TITLE: Division 335-3, Air Pollution Control Program

335-3-8-.07	- TR NOX Annual Trading Program-Purpose and Definitions (New)
335-3-8-.08	- TR NOX Annual Trading Program- Applicability (New)
335-3-8-.09	- TR NOX Annual Trading Program – Retired Unit Exemption (New)
335-3-8-.10	- TR NOX Annual Trading Program – Standard Requirements (New)
335-3-8-.11	- TR NOX Annual Trading Program – Computation of Time (New)
335-3-8-.12	- Administrative Appeal Procedures (New)
335-3-8-.13	- NOX Annual Trading Budgets and Variability Limits (New)
335-3-8-.14	- TR NOX Annual Allowance Allocations (New)
335-3-8-.16	- Authorization of Designated Representative and Alternate Designated Representative (New)
335-3-8-.17	- Responsibilities of Designated Representative and Alternate Designated Representative (New)
335-3-8-.18	- Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (New)
335-3-8-.19	- Certificate of Representation(New)
335-3-8-.20	- Objections Concerning Designated Representative and Alternate Designated Representative (New)
335-3-8-.21	- Delegation by Designated Representative and Alternate Designated Representative (New)
335-3-8-.23	- Establishment of Compliance Accounts, Assurance Accounts, and General Accounts (New)
335-3-8-.24	- Recordation of TR NOX Annual Allowance Allocations and Auction Results (New)
335-3-8-.25	- Submission of TR NOX Annual Allowance Transfers (New)
335-3-8-.26	- Recordation of TR NOX Annual Allowance Transfers (New)
335-3-8-.27	- Compliance with TR NOX Annual Emissions Limitation (New)
335-3-8-.28	- Compliance with TR NOX Annual Assurance Provisions (New)
335-3-8-.29	- Banking (New)

- 335-3-8-.30 - Account Error (New)
- 335-3-8-.31 - Administrator's Action on Submissions (New)
- 335-3-8-.33 - General Monitoring, Recordkeeping, and Reporting Requirements (New)
- 335-3-8-.34 - Initial Monitoring System Certification and Recertification Procedures (New)
- 335-3-8-.35 - Monitoring System Out-of-Control Periods (New)
- 335-3-8-.36 - Notifications Concerning Monitoring (New)
- 335-3-8-.37 - Recordkeeping and Reporting (New)
- 335-3-8-.38 - Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements (New)
- 335-3-8-.39 - TR NOX Ozone Season Trading Program – Purpose and Definitions(New)
- 335-3-8-.40 - TR NOX Ozone Season Trading Program – Applicability (New)
- 335-3-8-.41 - TR NOX Ozone Season Trading Program – Retired Unit Exemption (New)
- 335-3-8-.42 - TR NOX Ozone Season Trading Program – Standard Requirements (New)
- 335-3-8-.43 - TR NOX Ozone Season Trading Program – Computation of Time (New)
- 335-3-8-.44 - Administrative Appeal Procedures (New)
- 335-3-8-.45 - NOX Ozone Season Trading Budgets and Variability Limits (New)
- 335-3-8-.46 - TR NOX Ozone Season Allowance Allocations (New)
- 335-3-8-.47 - Reserved (New)
- 335-3-8-.48 - Authorization of Designated Representative and Alternate Designated Representative (New)
- 335-3-8-.49 - Responsibilities of Designated Representative and Alternate Designated Representative (New)
- 335-3-8-.50 - Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source (New)
- 335-3-8-.51 - Certificate of Representation (New)
- 335-3-8-.52 - Objections Concerning Designated Representative and Alternate Designated Representative (New)
- 335-3-8-.53 - Delegation by Designated Representative and Alternate Designated Representative (New)
- 335-3-8-.54 - Reserved (New)
- 335-3-8-.55 - Establishment of Compliance Accounts, Assurance Accounts, and General Accounts (New)
- 335-3-8-.56 - Recordation of TR NOX Ozone Season Allowance Allocations and Auction Results (New)
- 335-3-8-.57 - Submission of TR NOX Ozone Season Allowance Transfers (New)
- 335-3-8-.58 - Recordation of TR NOX Ozone Season Allowance Transfers (New)
- 335-3-8-.59 - Compliance with TR NOX Ozone Season Emissions Limitation (New)

- 335-3-8-.60 - Compliance with TR NOX Ozone Season Assurance Provisions (New)
- 335-3-8-.61 - Banking (New)
- 335-3-8-.62 - TR NOX Ozone Season Trading Program – Account Error (New)
- 335-3-8-.63 - TR NOX Ozone Season Trading Program – Administrator’s Action on Submissions (New)
- 335-3-8-.64 - Reserved (New)
- 335-3-8-.65 - General Monitoring, Recordkeeping, and Reporting Requirements (New)
- 335-3-8-.66 - Initial Monitoring System Certification and Recertification Procedures (New)
- 335-3-8-.67 - Monitoring System Out-of-Control Periods (New)
- 335-3-8-.68 - Notifications Concerning Monitoring (New)
- 335-3-8-.69 - Recordkeeping and Reporting (New)
- 335-3-8-.70 - Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements (New)

INTENDED ACTION: Revise Division 3 of the ADEM Administrative Code with the adoption of Rules 335-3-8-.07 (TR NOX Annual Trading Program-Purpose and Definitions), 335-3-8-.08 (TR NOX Annual Trading Program- Applicability), 335-3-8-.09 (TR NOX Annual Trading Program – Retired Unit Exemption), 335-3-8-.10 (TR NOX Annual Trading Program – Standard Requirements), 335-3-8-.11 (TR NOX Annual Trading Program – Computation of Time), 335-3-8-.12 (Administrative Appeal Procedures), 335-3-8-.13 (NOX Annual Trading Budgets and Variability Limits), 335-3-8-.14 (TR NOX Annual Allowance Allocations), 335-3-8-.16 (Authorization of Designated Representative and Alternate Designated Representative), 335-3-8-.17 (Responsibilities of Designated Representative and Alternate Designated Representative), 335-3-8-.18 (Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source), 335-3-8-.19 (Certificate of Representation), 335-3-8-.20 (Objections Concerning Designated Representative and Alternate Designated Representative), 335-3-8-.21 (Delegation by Designated Representative and Alternate Designated Representative), 335-3-8-.23 (Establishment of Compliance Accounts, Assurance Accounts, and General Accounts), 335-3-8-.24 (Recordation of TR NOX Annual Allowance Allocations and Auction Results), 335-3-8-.25 (Submission of TR NOX Annual Allowance Transfers), 335-3-8-.26 (Recordation of TR NOX Annual Allowance Transfers), 335-3-8-.27 (Compliance with TR NOX Annual Emissions Limitation), 335-3-8-.28 (Compliance with TR NOX Annual Assurance Provisions), 335-3-8-.29 (Banking), 335-3-8-.30 (Account Error), 335-3-8-.31 (Administrator’s Action on Submissions), 335-3-8-.33 (General Monitoring, Recordkeeping, and Reporting Requirements), 335-3-8-.34 (Initial Monitoring System Certification and Recertification Procedures), 335-3-8-.35 (Monitoring System Out-of-Control Periods), 335-3-8-.36 (Notifications Concerning Monitoring), 335-3-8-.37 (Recordkeeping and Reporting), 335-3-8-.38 (Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements), 335-3-8-.39 (TR NOX Ozone Season Trading Program – Purpose and Definitions), 335-3-8-.40 (TR NOX Ozone Season Trading Program – Applicability), 335-3-8-.41 (TR NOX Ozone Season Trading Program – Retired Unit Exemption), 335-3-8-.42 (TR NOX Ozone Season Trading Program – Standard Requirements), 335-3-8-

.43 (TR NOX Ozone Season Trading Program – Computation of Time), 335-3-8-.44 (Administrative Appeal Procedures), 335-3-8-.45 (NOX Ozone Season Trading Budgets and Variability Limits), 335-3-8-.46 (TR NOX Ozone Season Allowance Allocations), 335-3-8-.47 (Reserved), 335-3-8-.48 (Authorization of Designated Representative and Alternate Designated Representative), 335-3-8-.49 (Responsibilities of Designated Representative and Alternate Designated Representative), 335-3-8-.50 (Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source), 335-3-8-.51 (Certificate of Representation), 335-3-8-.52 (Objections Concerning Designated Representative and Alternate Designated Representative), 335-3-8-.53 (Delegation by Designated Representative and Alternate Designated Representative), 335-3-8-.54 (Reserved), 335-3-8-.55 (Establishment of Compliance Accounts, Assurance Accounts, and General Accounts), 335-3-8-.56 (Recordation of TR NOX Ozone Season Allowance Allocations and Auction Results), 335-3-8-.57 (Submission of TR NOX Ozone Season Allowance Transfers), 335-3-8-.58 (Recordation of TR NOX Ozone Season Allowance Transfers), 335-3-8-.59 (Compliance with TR NOX Ozone Season Emissions Limitation), 335-3-8-.60 (Compliance with TR NOX Ozone Season Assurance Provisions), 335-3-8-.61 (Banking), 335-3-8-.62 (TR NOX Ozone Season Trading Program – Account Error), 335-3-8-.63 (TR NOX Ozone Season Trading Program – Administrator’s Action on Submissions), 335-3-8-.64 (Reserved), 335-3-8-.65 (General Monitoring, Recordkeeping, and Reporting Requirements), 335-3-8-.66 (Initial Monitoring System Certification and Recertification Procedures), 335-3-8-.67 (Monitoring System Out-of-Control Periods), 335-3-8-.68 (Notifications Concerning Monitoring), 335-3-8-.69 (Recordkeeping and Reporting), 335-3-8-.70 (Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements).

SUBSTANCE OF PROPOSED ACTION:

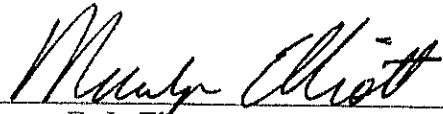
Revisions to the Division 3 Code are being proposed to add Rules 335-3-8-.07, 335-3-8-.08, 335-3-8-.09, 335-3-8-.10, 335-3-8-.11, 335-3-8-.13, 335-3-8-.14, 335-3-8-.16, 335-3-8-.17, 335-3-8-.18, 335-3-8-.19, 335-3-8-.20, 335-3-8-.21, 335-3-8-.23, 335-3-8-.24, 335-3-8-.25, 335-3-8-.26, 335-3-8-.27, 335-3-8-.28, 335-3-8-.29, 335-3-8-.30, 335-3-8-.31, 335-3-8-.33, 335-3-8-.34, 335-3-8-.35, 335-3-8-.36, 335-3-8-.37, 335-3-8-.38, 335-3-8-.39, 335-3-8-.40, 335-3-8-.41, 335-3-8-.42, 335-3-8-.43, 335-3-8-.44, 335-3-8-.45, 335-3-8-.46, 335-3-8-.47, 335-3-8-.48, 335-3-8-.49, 335-3-8-.50, 335-3-8-.51, 335-3-8-.52, 335-3-8-.53, 335-3-8-.54, 335-3-8-.55, 335-3-8-.56, 335-3-8-.57, 335-3-8-.58, 335-3-8-.59, 335-3-8-.60, 335-3-8-.61, 335-3-8-.62, 335-3-8-.63, 335-3-8-.64, 335-3-8-.65, 335-3-8-.66, 335-3-8-.67, 335-3-8-.68, 335-3-8-.69, and 335-3-8-.70 in order to incorporate provisions for the control of nitrogen oxides emissions from specified categories as required by the Environmental Protection Agency’s Cross-State Air Pollution Rule (CSAPR) as promulgated August 8, 2011 (76 FR 48208) and revised on December 3, 2014 (79 FR 71663). This adoption allows the Department to retain State primacy in the implementation of the regulations. Revisions to this Chapter are proposed to be incorporated into Alabama’s SIP.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments may be submitted in writing or orally at a public hearing to be held 10:00 a.m., September 9, 2015, in ADEM Hearing Room, 1400 Coliseum Blvd., Montgomery, Alabama 36110.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: September 11, 2015

CONTACT PERSON AT AGENCY: Chris Howard (334) 271-7878

A handwritten signature in black ink, appearing to read "Lance R. LeFleur", written over a horizontal line.

Lance R. LeFleur
Director

335-3-8-.14 [Repealed February 20, 2015] Reserved. TR NO_x Annual Allowance Allocations. [NEW RULE]

(1) State Annual Trading Program Budget. The State trading budget for annual allocations of Transport Rule (TR) NO_x Annual allowances for the control periods 2017 and thereafter is 71,962 tons.

(2) Timing Requirements for NO_x Allowance Allocations.

(a) By June 1, 2016, the Department will submit to the Administrator, in a format prescribed by the Administrator, the annual NO_x allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2017 and 2018.

(b) By June 1, 2017, the Department will submit to the Administrator, in a format prescribed by the Administrator, the annual NO_x allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2019 and 2020.

(c) By June 1, 2018, the Department will submit to the Administrator, in a format prescribed by the Administrator, the annual NO_x allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in 2021 and 2022.

(d) By June 1, 2019, and every other year thereafter, the Department shall submit to the Administrator, in a format prescribed by the Administrator, the annual NO_x allowance allocations, in accordance with paragraph (3) of this rule, for the control periods in the two years that are four and five years after the year of the applicable deadline for submission under this paragraph.

(3) NO_x Allowance Allocations.

(a) Definitions. For the purpose of this rule, the following definitions apply:

1. Baseline TR NO_x Unit. A TR NO_x unit that either:

(i) Commenced operation on or before January 1, 2014; or

(ii) Submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014.

2. New TR NO_x Unit. A TR NO_x unit that does not meet the definition of a Baseline TR NO_x Unit as defined in subparagraph (3)(a)1. of this paragraph.

(b) Determination of Heat Input.

1. The heat input (in mmBtu) used for calculating TR NO_x allowance allocations under subparagraph (2)(a) of this rule that are to be submitted to the Administrator by June 1, 2016 will be:

(i) For a Baseline TR NO_x unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2010, 2011, 2012, 2013, and 2014; or

(ii) For a Baseline TR NO_x unit that did not commence operation on or before January 1, 2014, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014, the expected actual annual heat input based on actual utilization data of similar sources.

(iii) For a New TR NO_x unit, the expected actual annual heat input based on actual utilization data of similar sources.

2. The heat input (in mmBtu) used for calculating TR NO_x allowance allocations under subparagraph (2)(b) of this rule that are to be submitted to the Administrator by June 1, 2017 will be:

(i) For a Baseline TR NO_x unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated, in 2011, 2012, 2013, 2014, and 2015; or

(ii) For a Baseline TR NO_x unit that did not commence operation on or before January 1, 2015, but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before January 1, 2014, the expected actual annual heat input based on actual utilization data of similar sources.

(iii) For a New TR NO_x unit that commenced operation on or before January 1, 2015, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 2014 and 2015.

(iv) For a New TR NO_x unit that did not commence operation on or before January 1, 2015, the expected actual annual heat input based on actual utilization data of similar sources.

3. The heat input (in mmBtu) used for calculating TR NO_x allowance allocations under subparagraph (2)(c) of this rule that are to be submitted to the Administrator by June 1, 2018 will be:

(i) For a Baseline TR NO_x unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input for the control periods, in which the unit operated in 2012, 2013, 2014, 2015, and 2016.

(ii) For a New TR NO_x unit that commenced operation on or before January 1 2016, the average of the three (or less, if applicable) highest

amounts of the unit's heat input, in which the unit operated in 2014, 2015, and 2016.

(iii) For a New TR NO_x unit that did not commence operation on or before January 1, 2016, the expected actual annual heat input based on actual utilization data of similar sources.

4. The heat input (in mmBtu) used for calculating TR NO_x allowance allocations under subparagraph (2)(d) of this rule that are to be submitted to the Administrator by June 1, 2019, and all subsequent allocation years will be:

(i) For a Baseline TR NO_x unit, the average of the three (or less, if applicable) highest amounts of the unit's heat input, in which the unit operated for the five most recent control periods available prior to the deadline submission year.

(ii) For a New TR NO_x unit that commenced operation prior to January 1 of the most recent control period available prior to the submission year, the average of the three (or less, if applicable) highest amounts of the unit's heat input, in which the unit operated, for the five most recent control periods available prior to the submission year; or

(iii) For a New TR NO_x unit that did not commence operation prior to January 1 of the most recent control period available prior to the submission year, the expected actual annual heat input based on actual utilization data of similar sources.

5. The unit's total heat input for the control period in each year specified under subparagraph (b) of this paragraph will be determined in accordance with 40 CFR 75 if the TR NO_x unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Administrator and the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(c) Establishment of Baseline and Retired Unit Allowance Pools. At the time Transport Rule (TR) annual NO_x allowances are initially allocated to baseline TR NO_x units under subparagraph (2)(a) of this rule, each unit's allocation will be permanently recorded as that unit's "Baseline Allowance". This value will be used to calculate the following:

1. Baseline Allowance Pool. The Baseline Allowance Pool shall be calculated each time TR annual NO_x allowances are allocated under paragraph (2) of this rule and shall equal the State Annual Trading Program Budget minus the total of the Baseline Allowances for all baseline TR NO_x units that have retired in accordance with Rule 335-3-8-.09.

2. Retired Unit Allowance Pool. The Retired Unit Allowance Pool shall be calculated each time TR NO_x allowances are allocated under paragraph (2) of this rule and shall equal the sum of the Baseline Allowances for all TR NO_x units that have retired in accordance with Rule 335-3-8-.09.

(d) Adjustment Ratios. To ensure that the total number of TR NOx allowances allocated under paragraph (3) of this rule equals the number of tons of TR NOx emissions in the State trading program budget, the following ratios may be applied to the calculated TR NOx allowance allocations, as appropriate.

1. Baseline Adjustment Ratio. The Baseline Adjustment Ratio is the total number of TR NOx allowances in the Baseline Allowance Pool, divided by the total number of TR NOx allowances calculated for Baseline TR NOx units for a control period prior to any adjustments.

(e) Maximum Historic Emission Cap. The maximum historic emission cap is identified by using an 8 year historic emission period for each TR NOx unit. The last year of the 8 year period will be the same year as the last year used for determination of heat input under paragraph (3)(b) of this rule. The maximum historic emission cap is the maximum NOx emissions (in tons) that occurred during any control period during the 8 year historic emission period. Data used for this purpose shall be obtained from the EPA Clean Air Markets Division (CAMD). An additional emission cap may be applied if a TR NOx unit has an enforcement action or permit limit in place. The 8 year historic emission values will update every two years to coincide with the allocation control period.

(f) Calculation of TR NOx Allowances for Baseline TR NOx Units.

1. For each control period under paragraph (2) of this rule, the Department will allocate TR NOx allowances from the Baseline Allowance Pool to all baseline TR NOx units in accordance with the following procedures:

(i) The Department will allocate TR NOx allowances to each TR NOx unit under Rule 335-3-8-.08(1)(a) in an amount equaling the unit's share of the State's total 3 year average of heat input determined in accordance with subparagraph (b) of this paragraph, multiplied by the baseline allowance pool. If a TR NOx unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this paragraph, then its allocation will equal the maximum historic emission cap for that TR NOx unit.

(ii) Allocations remaining after the application of the maximum historic emission cap are reapportioned on the same basis to baseline TR NOx units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Baseline Allocation Pool is allocated. The resulting TR NOx allocation value is rounded to the nearest whole ton.

(g) Calculation of NOx Allowances for New TR NOx Units. For each control period under paragraph (2) of this rule, after calculating NOx allowances for all baseline TR NOx units that have not retired in accordance with Rule 335-3-8-.09, the Department will allocate NOx allowances in the Retired Unit Allowance Pool to all new TR NOx units, in accordance with the following procedures:

1. For each new TR NO_x unit under Rule 335-3-8-.08(1)(a), that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under paragraph (2) of this rule, the number of TR NO_x allowances allocated for each applicable control period will be equal to the unit's share of the State's total 3 year average of heat input for all new TR NO_x units, determined in accordance with subparagraph (b) of this paragraph multiplied by the Retired Unit Allowance Pool. If a new TR NO_x unit has an initial historic heat input based allocation that exceeds its maximum historic emission cap as defined in subparagraph (3)(e) of this paragraph, then its allocation equals the maximum historic emission cap for that TR NO_x unit.

2. Allocations remaining after application of the maximum historic emission cap are reapportioned on the same basis to new TR NO_x units whose historic heat input based allocation does not exceed its maximum historic emission cap, if applicable. These steps are repeated until the entire Retired Unit Allowance Pool is allocated or until all new units receive allocations equal to its maximum historic emission cap. The resulting TR NO_x allocation value is rounded to the nearest whole ton.

(h) Adjustment of Baseline NO_x Allowance Allocations. If TR NO_x allowances remain in the Retired Unit Allowance Pool after allocations are made to all new TR NO_x units in accordance with subparagraph (g) of this paragraph, these NO_x allowances will be allocated on a pro rata basis to the baseline TR NO_x units where historic heat input based allocation does not exceed its maximum historic emission cap, for the applicable control periods.

(i) NO_x allowances allocated to baseline TR NO_x units based on heat inputs determined in accordance with subparagraph (b)1.(ii) or (b)2.(ii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which NO_x allowances were allocated. If the unit does not commence operations, the NO_x allowances will be transferred by the Department pro rata to Baseline TR NO_x units that were allocated NO_x allowances in accordance with subparagraph (b)1.(i) or (b)2.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the Department shall notify the Administrator of the appropriate NO_x allowance transfers.

1. NO_x allowances allocated to new TR NO_x units based on heat inputs determined in accordance with subparagraphs (b)1.(iii), (b)2.(iv), (b)3.(iii), or (b)4.(iii) of this paragraph will be held in the State's general account until the unit commences operation, prior to or during the control period for which NO_x allowances were allocated. If the unit does not commence operation, the NO_x allowances will be transferred by the Department pro rata to Baseline TR NO_x units that were allocated NO_x allowances in accordance with subparagraphs (b)1.(i) and (ii), (b)2.(i) and (ii), (b)3.(i), or (b)4.(i) of this paragraph, and whose historic heat input based allocation does not exceed its maximum historic emission cap if applicable. By January 30 of the following year, the

Department shall notify the Administrator of the appropriate NO_x allowance transfers.

2. NO_x allowances will not be allocated to TR NO_x units that retire under Rule 335-3-8-.09 prior to the date NO_x allowance allocations are submitted to the Administrator under subparagraphs (2)(a), (b), (c), or (d) of this rule.

3. The total NO_x allowances allocated for any control period in accordance with subparagraphs (3)(f), and (g) of this paragraph shall not exceed the State NO_x Annual Trading Program Budget as determined by the applicable, approved State Implementation Plan.

(j) Units Incorrectly Allocated TR NO_x Annual Allowances. The procedures for addressing units that were incorrectly allocated TR NO_x Annual allowances are incorporated by reference as they exist in 40 CFR §97.411(c), Subpart AAAAA as of July 1, 2015. (The materials incorporated by reference are available for purchase and inspection at the Department's offices.)

Author: Ronald W. Gore.

Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

History: Effective Date: XXXXXX, 2016.

incorporate the requirements of federal regulations, as required by the Environmental Protection Agency (EPA). Through the adoption of these regulations, the Alabama Department of Environmental Management is given primacy to implement the regulations at the state level. In the event that these regulations are not implemented by the State, the EPA will implement the requirements on the federal level.

1. NEED/EXPECTED BENEFIT OF RULE:

These revisions are necessary to incorporate EPA's provisions for the control of nitrogen oxide emissions from specified categories of stationary sources as promulgated August 8, 2011 (76 FR 48208) and revised on December 3, 2014 (79 FR 71663). EPA has made a finding that 27 States and the District of Columbia contributed significantly to nonattainment of the national ambient air quality standards (NAAQS) for fine particles (PM_{2.5}) and/or ozone in downwind States. EPA expects the benefit of this rule will assist the downwind PM_{2.5} and ozone nonattainment areas in achieving the NAAQS. Moreover, attainment will be achieved in a more equitable, cost-effective manner than if each nonattainment area attempted to achieve attainment by implementing local emissions reductions alone. EPA is presently implementing CSAPR through a Federal Implementation Plan (FIP). As discussed above, adoption of the federal requirements through these regulations will allow the Department to retain State primacy in the implementation and enforcement of the regulations rather than defaulting to regulation by the federal government.

2. COST/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

The cost/benefits of this Rule are provided in EPA's regulatory impact analysis and the promulgated Rule in 76 FR 48208.

The costs are equivalent to the cost of compliance with the same regulations implemented by the federal government. Sources of air pollution will be subject to the same requirements for installation of controls to prevent the emissions of air pollution regardless of which agency (state or federal) implements these regulations.

3. EFFECT OF THIS RULE ON COMPETITION:

As stated above, if the regulations are not implemented by the State of Alabama, they will be implemented on the federal level and Alabama companies will be required to comply with the federal regulations and answer directly to the federal Environmental Protection Agency.

4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

As stated above, if the regulations are not implemented and enforced by the State of Alabama, they will be implemented on the federal level. Therefore, Alabama companies still would be required to comply with the federal regulations and answer directly to the federal Environmental Protection Agency.

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

Adoption of these federally required regulations is not expected to have any effect on the employment in the geographical area in which the regulation would be implemented (State of Alabama).

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

Moneys from the Federal Grant, and fines and fees collected by the Department will fund the adoption of this regulation. For sources subject to Title V of the Clean Air Act, as amended, fees are collected based on the amount of air pollution emitted annually.

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

As stated above, if the regulations are not implemented by the State of Alabama, they will be implemented on the federal level. Alabama companies would still be required to comply with the federal regulations and answer directly to the federal Environmental Protection Agency.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:

No additional burdens are expected as a result of the adoption of these regulations. If the regulations are not adopted by the State of Alabama, they will be implemented on the federal level. Alabama companies would still be required to comply with the federal regulations and answer directly to the federal Environmental Protection Agency.

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

The effect of the regulation on the environment and public health is addressed in the Federal Register (76 FR 48208), August 8, 2011, that is the basis for these proposed rules.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

The benefits of the proposed regulations have been discussed in the above paragraphs as well as the Federal Register (see No. 9). Through the adoption of these regulations, ADEM will have primacy to implement the regulations at the State level. In the event that the regulations are not adopted at the State level, the requirements will still exist at the federal level. However, it is generally acknowledged that regulations are implemented and enforced in a more effective and efficient manner at the State level than at the federal level.